No. 87-2110

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1987

WILLIAM JONES

Petitioner,

vs.

CHARLES J. SCHAFFER, JR., Individually
and as Administrator of the Teamsters
Pension Trust Fund of Philadelphia and Vicinity
and
WILLIAM LEMON, VINCENT DAGEN
FREDERICK W. FOX, JR.,
JOSEPH CIMINO, PETER P. COYLE
and PAUL CARDULLO, Trustees of
the Teamsters Pension Trust Fund
of Philadelphia and Vicinity

and

CROSSMAN'S VAN AND STORAGE COMPANY, INC.

Respondents.

On Appeal from the United States Court of Appeals for the Third Circuit

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

A. Where good faith regular contributions were made continuously from 1955 through 1983 to the Teamsters Pension Fund, is the federal court precluded from hearing the truck driver-retiree's appeal from the decision of the arbitrator?

B. Where a truck driver-retiree had personally made good faith regular contributions over a period of many years to the Teamsters Pension Fund and where he is first notified after he retires that all such payments were through mistake, should the said Pension Fund refund the contributions to the truck driver-retiree?

C. Where the Court of Appeals for the Third Circuit differs from other federal Courts of Appeal in construing the retiree's right to a refund, should that standard be reconsidered?

D. Was it arbitrary and capricious for trustees of the Teamsters Pension Trust Fund of Philadelphia and Vicinity to deny truck driver-retiree a retirement pension and simultaneously refuse to refund money contributed by truck driver-retiree through alleged mistake?

E. Were there material issues of fact with regard to truck driver – retiree's claims of unlawful discrimination under the Civil Rights Act of 1871 to preclude summary dismissal of truck driver-retiree's Complaint?

F. Does the doctrine of federal preemption under the Employee Retirement Income Security Act preclude to federal court from hearing truck driver-retiree's state law claims?

LIST OF ALL PARTIES

WILLIAM JONES

PETITIONER

VS.

CHARLES J. SCHAFFER, JR., Individually and as Administrator of the Teamsters Pension Trust Fund of Philadelphia and Vicinity

and

WILLIAM LEMON, VINCENT DAGEN, FREDERICK W. FOX, JR., JOSEPH CIMINO, PETER P. COYLE and PAUL CARDULLO, Trustees of the Teamsters Pension Trust Fund of Philadelphia and Vicinity

and

CROSSMAN'S VAN AND STORAGE COMPANY, INC.

RESPONDENTS

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REFERENCE TO THE OPINION OF THE LOWER COURT

The District Court entered summary judgement on September 4, 1987. The Court of Appeals for the Third Circuit affirmed the District Court on March 25, 1988. On April 7, 1988 it declined to publish its opinion, the text of which is in the Appendix hereto.

The Court of Appeals for the Third Circuit, without argument or consideration of the equities, affirmed an extremely harsh and fundamentally unfair result. It decided that, on the one hand, William Jones was not a party to the collective bargaining agreement while, on the other hand, bound him to its apparent terms – terms which were construed many years after the fact and applied retroactively.

Hearing on William Jones' civil rights claims based upon age and race discrimination were summarily denied notwithstanding factual conflicts. The question of whether the motivation for creating "commission drivers" was economical or whether it was for purposes of unlawful age discrimination or race discrimination, has never reached a factual determination. William Jones has been denied any hearing whatsoever on those claims. Such a situation is an obvious abridgement of his right to due process of law and is fundamentally unfair.

JURISDICTION

This case arises from a federal question under the Employment Retirement Income Security Act (ERISA) 29 USC 1001 et seq., the Age Discrimination in Employment

Act 29 USC 621, the Labor Management Reporting Act 29 USC 140 et seq. and the Civil Rights Act of 1871, 42 USC 1985(3) and 42 USC 1986. Jurisdiction of this Court to review this case on petition for certiorari rests upon 28 USC 1254(1). The present appeal is taken as a matter of right under the Constitution of the United States.

The ERISA expressly authorizes the bringing of Jones' civil claim. The Act provides as follows:

§1132. Civil enforcement

(a) Persons empowered to bring civil action

A civil action may be brought

(1) by a participant or beneficiary
(A) for the relief provided for in subsection (c) of this section, of

(B) to recover benefits due to him under the terms of his plan to enforce his rights under the terms of the plan, or to clarify, his rights, to future benefits under the terms of the plan;

Further, at 29 U.S.C.-1132(e)(1), the Act vests jurisdiction in the District Court of the United States:

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

ERISA provides further that a claims procedure must be established within the structure of the benefit plans, 29 U.S.C. §1133.

The Order of the Court of Appeals for the Third Circuit was entered March 25, 1988.

STATUTES

28 USC §1254

29 USC §140

29 USC §621

29 USC §1001 et seq

42 USC §1985

42 USC §1986

STATEMENT OF THE CASE

The petitioner, William Jones, is the plaintiff below. Jones seeks an award of a retirement pension or, in the alternative, a refund of the monies he paid during many years through mistake. The monies are held by the Teamsters Pension Trust Fund of Philadelphia and Vicinity. Jones retired in 1983 at age 62, after suffering a stroke. For the continuous period from 1955 until 1983, William Jones was a driver for Crossman's Van and Storage Company (hereinafter "Company") and was a member of the Teamsters Local Union 513, transporting merchandise and goods, on behalf of Company, to various cities and

towns throughout the United States. Under a collective bargaining agreement between Company and the local union of Teamsters, the Company was required to make regular contributions to the multiemployer Teamsters Pension Trust Fund of Philadelphia and Vicinity (hereinafter "Fund") on behalf of employees. Contributions to other Teamster benefit funds were also required but those Funds (such as Health and Welfare) are not at issue in this case.

Between 1955 and 1972, the Company made regular contributions to the Fund on behalf of William Jones pursuant to the aforesaid collective bargaining agreement. At the time of the petroleum crisis in the United States during the early 1970's, trucking companies in Philadelphia singled out their older, predominantly black drivers with offers to become "commission drivers." Among the principal aspects of the change were that (a) the driver would no longer be paid on an hourly basis but would instead be compensated at a percentage of the profit and (b) the driver became responsible for his own vehicle, its fuel and its maintenance. On or about May 3, 1972, Jones' designation was changed from an hourly paid driver to that of a "Commission Driver". It was explained to him that all of the benefits of union membership would continue in full force and effect – including retirement pension benefits.

As of the time of the change in the Jones' designation to "Commission Driver", the Company ceased making contributions to the Fund on his behalf and began withholding sums of money from the commission payments that were otherwise payable to Jones. The withholdings from Jones commission were paid to the pension Fund

and ranged from approximately $2.60 per day to approximately $5.60 per day from May, 1972 until June, 1983, a period greater than eleven (11) years. It is admitted that all of the withheld money was paid to the Fund and was kept by the Fund.

Jones was not given any periodic report or notification of the status of his pension account during the entire period from 1955 to 1983. His contributions were made on the good faith belief that he would be entitled to a retirement pension. Throughout his working career, 1955 to 1983, Jones also participated in other Teamster benefit plans. Beginning in 1972 contributions were withheld from his commissions by the Company and paid to other Teamster benefit funds in a manner similar to that with Pension Fund.

In June, 1983 at the age of 62, Jones suffered a stroke, could no longer work, and therefore retired. He applied to the Fund for retirement pension benefits and after almost a year of investigation, the Fund representatives advised him that his pension claim was denied. The stated reason for the denial was that "commission drivers" are not members of the bargaining unit and, hence, cannot participate in the pension plan.

Jones appealed the denial through the Fund's administrative process. Among the steps in the Fund's administrative procedure, Jones was required to present his claim to an arbitrator.

The Fund's arbitrator decided that the period of contributions from 1955 through 1972 was not sufficient for vesting of Jones' pension rights. The arbitrator also held that the collective bargaining agreement between the

Company and Teamsters Local 513 did not have a classification for "Commission Driver" and, hence, Jones was not a member of the bargaining unit. Having been deemed not a member, Jones' application for pension was denied. Further, the arbitrator refused to return Jones' own contributions, citing *Crown, Cork and Seal Company v. Teamsters Pension Trust Fund of Philadelphia and Vicinity*, 549 F. Supp. 307 (E.D. Pa. 1982), aff'd 720 F. 2d 661 (3d Cir. 1983).

Having exhausted the administrative remedies, plaintiff Jones brought suit to enforce his right to a pension and, alternatively, to recover his own money that was paid to the Fund during the May 1972 to June 1983 period. His suit also alleges that older employees and blacks were singled out to be designated as commission drivers.

Since the time he became ill in 1983, Jones has become financially destitute and survives on public assistance.

Petitioner's Complaint was brought in the Eastern District of Pennsylvania. No Answers were filed. Instead, both the defendant Fund and the defendant Company filed motions to dismiss and for summary judgment.

The District Court granted summary judgement on the ERISA claim on the theory of res judicata. The District Court dismissed the state law claims on its analysis of federal preemption. The civil rights claims were dismissed on the analysis that conspiracies for economic purposes cannot be actionable. Judgment was entered dismissing the Complaint, with no leave to amend.

On appeal to the U.S. Court of Appeals for the Third Circuit, the Court declined to hear any oral argument and entered judgment based upon the District Court record. The defendant Fund motioned for publication of the court's order but same was denied. The present appeal followed.

REASONS WHY QUESTIONS PRESENTED ARE SUBSTANTIAL

A. The decision below is in conflict with the decisions of other United States Courts of Appeal which have held that a party seeking relief, pursuant to §403 of the Employee Retirement Income Securing Act as amended by the Multiemployer Pension Plan Amendment Act of 1980 (29 USC §1103(c)(2)(A)(ii), has a right to restitution of mistaken contributions when the equities favor it.

The case presented calls for an articulation of federal law governing the determination of a refund policy pursuant to ERISA and MPPAA.

The arbitrator denied Jones' pension application, and, relying on *Crown, Cork and Seal Company v. Teamsters Pension Trust Fund of Philadelphia and Vicinity*, 3EBC2398, 549 F. Supp 307 (E.D. Pa. 1982), *Aff'd without opinion* 720 F2d 661 (3d Cir. 1983). refused to return the contributions made from Jones' own pocket.

Crown Cork involved an *employer* contributor who instituted a declaratory judgment action to determine its rights to recover excess contributions it had mistakenly made to the defendant Fund. The U.S. District Court began its analysis by noting that the preamble of ERISA

"makes it apparent that in enacting ERISA congress' overriding concern was that employees with long years of employment and contributors are assured of receiving their pension benefits. 3 EBC at 2399. Because "the employer is in the best position to monitor the amount of its own contributions", 3 EBC at 2402, and "a right to restitution in favor of *employers* could severely undermine the funds' integrity" (*Id.*) (emphasis supplied), the court established a no refund policy. The language of the opinion, however is solely concerned where *employers* as plaintiffs, as distinguished from Jones' case where a *retiree* is the plaintiff.

The Tenth Circuit has held that it is an abuse of a trustee's discretion to deny a refund where there is no evidence that restitution would underfund the pension fund. *Peckham v. Board of Trustees of the International Bhd. of Painters and Allied Trade Union*, 719 F2d 1063, 1066, *modified and aff'd on rehrg* 724 F2d 100 (1983). Similarly, the Ninth Circuit has noted that without the private remedy implicit in §403(c)(2)(A)(ii), "the decision to return contributions mistakenly paid would be left solely in the interest trustee." *Award Services, Inc. v. N. Cal. Retail Clerks Union*, 763 F2d 1066, 1068 (1985), cert denied ___ US ___, 106 S Ct. 850, 88 LEd2d 490 (1986). *Award Services* relied in part on that circuit's earlier opinion in *Chase v. Trustees of Western Conference of Teamsters Pension Trust Fund*, 753 F2d 744 (1985), which involved a claim for restitution on the part of owner-drivers of taxicabs who were not the "employer" that made the contributions to the pension fund:

> [T]he owner-drivers will accrue no benefits under the plan, and in the absence of a remedy, their

> contributions would be forfeited. The critical question is whether refunding the owner-drivers' contribution would undermine the financial stability of the plan.

Chase, supra, 753 F2d at 753. Hence, the Ninth Circuit's "critical" questioning is, in the Third Circuit, replaced with a blind assumption in the absence of any evidence of resultant financial instability. *Crown Cork, supra,* 549 F. Supp 311-12.

The Fourth Circuit has likewise held that the district court should determine whether the claimant is entitled to refund on the basis of equitable principles, *Teamsters Local 639-Employers Health Trust v. Cassidy Trucking, Inc,* 646 F2d 865, 868 (1981), while the Second Circuit has concluded that such equitable principles mandate affirmance of an offset award where an employer's overpayments were made under a mistake of fact. *Dumac Forestry Service v. International Brotherhood of Electrical Workers,* 814 F2d 79, 81-82 (1987). The Sixth Circuit has also specifically recognized the validity of such claims of unjust enrichment. *Whitworth Brothers Storage Company v. Central States and Southwest Areas Pension Fund,* 794 F2d 221, 235-36 (1986).

The District Court of Minnesota (Eight Circuit), confronted with the argument that §1103 (c)(2)(A) permits a fund's trustees to decide whether to adopt a rule requiring the return of all mistakenly made payments for which timely application is made, noted:

> There is no support in the legislative history for this interpretation. Moreover, this interpretation also would render §1103(c)(2)(A) a nullity, for trustees would have little if any incentive to adopt such a rule if not required to do so.

U.M. Trucks, Inc. v. Central States, etc., 517 F. Supp. 1122, 1125 n 3 (1981). Thus, the fact issue existing as to whether equity required the return of payments precluded summary judgement. *Id. (See*, also, *Central States v. Wholesale Produce Supply Co.*, 470 F. Supp 884 (D Minn 1979), *aff'd* 611 F2d 694 (8th Cir 1979) – Court approved an employee's offset of overpaid contribution). The Southern District Court of Mississippi (5th Circuit) has, at least, acknowledged the application of equitable considerations, though in dicta. *Carpenters Local 1471 v. Bar-Con, Inc.*, 668 F Supp 560, 568 (1987).

Hence, it is respectfully submitted that the lower court's slavish adherence to *Crown Cork* can not be rationalized, neither in light of the clearly emerging trend in the cited jurisdictions which reach directly contrary conclusions; nor, in terms of the facts which underlie *Crown Cork*, to wit: a well-positioned *employer* fully capable of monitoring its contributions.

Finally, defendants argued, successfully, that the findings of the arbitrator, that is restitution refusal to appellant Jones, must be deemed final. The effect of arbitration was explored by this Honorable Court in a case involving an individual employee's right to a minimum wage and overtime pay pursuant to the Fair Labor Standards Act, 29 USC §201 et seq:

> ***FLSA rights can not be abridged by contract or otherwise waived because this would "nullify the purposes" of the statute and thwart the legislative policies it was designed to effectuate . . . Moreover, we have held that congressionally granted FLSA right take precedence over conflicting provisions in a collectively bargained compensation arrangement
>
> ***

> ***Because the "specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land," many arbitrators may not be conversant with the public law considerations underlying the FLSA.
>
> ***
>
> ***Because the arbitrator is required to effectuate the intent of the parties, rather than to enforce the statute, he may issue a ruling that is inimical to the public policies underlying the FLSA, thus depriving an employee of protected statutory rights.

Barrentine v. Arkansas-Best Freight System, 450 US 728,742-746, 101 S Ct 1437, 1445-1447, 67 LEd2d 641 (1981) (citation and footnotes omitted throughout). For these reasons, this court held that a prior submission of the controversy to arbitration will not bar the litigation of petitioner's claim in a judicial forum. With respect to the public policy consideration, it is abundantly clear that "in enacting ERISA Congress' overriding concern was that employees with long years of employment and contributions are assured of receiving their pension benefits." *Crown Cork, supra.* Therefore, the arbitration determination relative to William Jones is not *res judicata* for an ERISA claim. *(See* also, *Amaro v. Continental Can Co.* 724 F2d 747, 749-750 (9th Cir. 1984).

The situation in which Mr. Jones finds himself is abhorrent, and becomes even more egregious given "the differences in the rules governing access to federal court for the purpose of pressing a claim under ERISA." *John Mason v. Continental Group, Inc,* 474 US 1087, 106 S Ct 863, 88 LEd2d 902 (1986) – dissent from denial of cert., J. White and Brennan stated:

> The increasing significance of ERISA litigation is apparent from the growing number of such cases that

> appear on our docket; in a field so productive of federal litigation, the need for clear procedural rules governing access to the federal courts is imperative. Moreover, because the coverage of particular ERISA plans frequently extends to beneficiaries in more than one State-and, no doubt, in more than one judicial circuit-differences in the rules governing access to federal court for the purpose of pressing a claim under ERISA may have the troubling effect of encouraging forum-shopping by plaintiffs. Accordingly, the conflict among the Circuits over the issue of an exhaustion requirement under ERISA can hardly be passed over as an unimportant one unworthy of this Court's attention."

ID.

The aforedescribed of the readily acknowledged purpose of ERISA, cannot be tolerated. Petitioner respectfully submits that the question is, indeed, worthy of this Honorable Court's attention. The questions submitted are very substantial.

B. The lower court decision will affect a large number of truck drivers whose number could create a large class of indigent senior citizens.

During the early 1970's, the country saw unprecedented increases in petroleum-based fuel costs and vehicle expenses. Transportation companies, with the assent and cooperation of their unions, created a category of "commission drivers" and minimized costs to the companies. The unions continued to receive checkoffs for dues and union benefits based upon the number of hours reported weekly by the company to have been worked by the "commission drivers." The weekly reports for hours worked with respect to the "commission drivers" were

included with the same reports for those of hourly paid drivers. The rates for checkoffs were the same for each group.

Typically, the "commission drivers" were the older, and predominantly black drivers. Today, the early groups of them are coming up for retirement only to discover that their pension contributions over the years went for nothing.

William Jones is one of the first of the "commission drivers" to retire. Other commission drivers are continuing to make contributions to the Teamsters Pension Fund in addition to union dues and other contributions. All of them are innocent victims who have and will learn, after its too late, that they have no retirement pension at all. They might be the next, and perhaps, largest single group of American senior citizens to become public wards.

William Jones' story is one that would affect the sensibilities of even the most callous citizen. Here is a man who faithfully followed the American ethic. He worked hard throughout his healthy years; he devoted his youth and energy doing his best at what he knew; and he planned and prepared for his twilight years by making good faith regular payments into the pension fund. Now when he is too old, too poor and too late to do anything about it, he is faced with the dilemma of neither getting a retirement pension nor getting a refund of his own money. Through no fault of his own, and despite his good faith efforts to avoid it, Jones is condemned to spend the rest of his life in poverty and on welfare. The fundamental unfairness of that result cannot be ignored. Why should William Jones suffer so, while the Teamster Fund

– which did nothing over the years to alert Jones or the Company of an eligibility question – be allowed a windfall. It strains credulity to conclude that Congress intended such an unfair result.

C. Manifest injustice results to retirees who are in the worst position to protect themselves and obtain a retirement pension.

The legal issues in this case involve intricate issues and arguments regarding federal preemption, statutory construction, exhaustion of remedies, res judicata, contract interpretation and jurisdiction. Trucking company employers, their unions and their pension trust funds are invariably represented by counsel who advise them on an ongoing basis regarding their rights, risks and remedies. On the other hand, truck drivers, such as William Jones and typically workers who have little education, little sophistication in dealing with the vagaries of the Teamsters Pension Fund and rely on the advice given by their union, by the Fund administrators and by their employers.

Over the period of almost thirty (30) years, neither the employer, the Pension fund nor the union reported to William Jones on the status of his pension, whether vested or not.

Jones' rights arise from the ERISA law, particularly 29 U.S.C. 1001(c) which declares the statutory policy of protecting "participants . . . and their beneficiaries" who have "significant periods of services . . . " There can be no question that Jones' years of contribution of the pension

fund – the latest 11 years out of his own money – is the very situation that ERISA was enacted to protect.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JONES, WILLIAM

vs.

CIVIL ACTION

SCHAFFER, CHARLES J., JR., et al.

86-3733

MEMORANDUM – ORDER

This civil action charges defendants, the Trustees of the Teamsters Pension Trust Fund of Philadelphia and Vicinity, the Administrator thereof (collectively the "Fund"), and Crossman's Van and Storage Company, Inc. ("Crossman") with violations of federal and state law based upon the denial to plaintiff of a pension or the return of his contribution made to the Fund. The federal claims alleged are violations of the Employee Retirement Income Security Act, 29 U.S.C. § 1132 ("ERISA"), Count III; the Civil Rights Act of 1871, 42 U.S.C. §§ 1985(3) and 1986, Counts IV and V; and the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. 1964 ("RICO"), Count II. By stipulation the RICO claim has been dismissed.[1] The Pennsylvania state law claims allegedly are based upon "unlawful conversation", Count I; violation of the Pennsylvania Wage Payment and Collection law, Count VI; common law fraud, Count VII; common law conspiracy, Count VIII, and intentional infliction of

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[1] The same stipulation also dismissed all claims against E. Crossman Hall, individually as President of Crossman's Van and Storage Co.

emotional distress, Count IX. Count X demands punitive damages.

The Fund defendants and Crossman have moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b) (6) or for summary judgment pursuant to Fed. R. Civ. P. 56. Plaintiff opposes the motions.

I.

Factual Background

The Fund is a multiemployer benefit plan established pursuant to § 302(c) (5) of the Labor Management Relations Act, 29 U.S.C. § 186(c) (5) and §§ 3(2), (3) and (37) of ERISA, 29 U.S.C. § 1002(2), (3) and (37). Crossman, an employer, makes periodic contributions to the Fund on behalf of certain of its drivers pursuant to a collective bargaining agreement with Teamster Local 513. Jones was a member of Local 513 and a driver for Crossman from 1955 until approximately June of 1983 when he retired because of illness. The company made contributions to the fund pursuant to a collective bargaining agreement between 1955 and 1972. In 1972, plaintiff was classified a "commission driver". Thereafter, Crossman pursuant to Jones' authorization deducted sums from Jones' commission payments and forwarded the same to the Fund. On retirement, plaintiff applied to the Fund for a pension. The Fund in verifying Jones' work history discovered the change of work status from driver to "commission driver". The Fund administrator determined that the collective bargaining agreement between Local 513 and Crossman did not include in the bargaining unit drivers compensated on a percent commission basis. Therefore,

the administrator denied Jones' pension application, and refused to return his contributions. As was his right under the Pension Plan, Jones appealed the administrator's decision to the Trustees. An evidentiary hearing was granted to Jones at which he was represented by counsel. Counsel argued that Jones in good faith believed that the contributions made to the Fund by deductions from his commissions entitled him to pension benefits. Alternatively, he argued that the money paid into the Fund should be reimbursed with interest. The Trustees rejected both arguments; they adopted the Administrator's position that the change in status from driver to commission driver removed plaintiff as a member of the bargaining unit. They also found that Jones' term of employment solely as a driver was insufficient to vest pension rights. Also, the Trustees rejected the claim for return of the funds contributed electing to apply to Jones the no return to employer policy judicially approved in *Crown Cork & Seal, Co. v. Teamsters Pension Trust Fund of Philadelphia and Vicinity*, 549 F. Supp. 307 (E.D. Pa, 1982), *aff'd*, 720 F.2d 661 (3d Cir. 1983). In *Crown Cork* an employer was denied recovery of contributions mistakenly made to a fund, notwithstanding the good faith of the employer. Counsel for Jones elected to submit the dispute to the American Arbitration Association ("AAA") as authorized by Article V of the Fund's Pension Plan. Article V, Section I of the Plan provides in pertinent part:

> If the Participant or beneficiary is dissatisfied with the written decision of the Trustees, he shall have the right to appeal the matter to arbitration in accordance with the labor arbitration rules of the American Arbitration Association, provided that he submitted a request for arbitration to the Board of

> Trustees, in writing, within sixty (60) days of receipt of the written decision.
>
> The question for the arbitrator shall be whether, in the particular instance, the Trustees (1) were in error upon an issue of law, (2) acted arbitrarily or capriciously in the exercise of their discretion, or (3) whether their findings of fact were supported by substantial evidence.
>
> . . .The decision of the arbitrator shall be final and binding upon the Trustees and upon the appealing party.
>
> The procedure specified in this section shall be the sole and exclusive procedures available to a Participant or beneficiary of a Participant who is dissatisfied with an eligibility determination, or benefit award, or who is otherwise adversely affected by any action of the Trustees.

The arbitration submission form named Mr. Jones' former employer, the Administrator and the Trustees as parties.

Mr. Jones, represented by counsel, appeared and participated in the arbitration hearing. After hearing, the arbitrator stated in his analysis that:

> Mr. Jones believed he was contributing appropriately and in good faith to the Pension Plan. He acknowledged his status as a commission driver and argued this did not make him different from other persons who participated in the pension program. He is not correct. Covered employees do not pay their own Social Security. They do receive vacations and holidays and the employer, not the individual makes the contribution to the Plan. Mr. Jones receives none of the benefits enumerated. The Plan was established for individuals who are employees and he is not an employee.

Arbitrator's Award, p. 6.

Also, the arbitrator considered the Trustees reliance on *Crown Cork, supra,* and concluded, "[F]or the Plan to act in a different manner in another instance would open the Trustees to a charge of arbitrary and capricious action." Accordingly, he denied the appeal finding that:

> (1) The Trustees were not in error upon an issue of Law.
> (2) The Trustees did not act in an arbitrary or capricious manner in the exercise of their discretion.
> (3) The Trustees findings of fact were supported by substantial evidence.

II.

The undisputed factual background and procedural history mandate that I grant the motions of defendants. As to the federal claims, plaintiff has voluntarily withdrawn the RICO claim. Counts IV and V of the complaint, which purport to set forth causes of actions pursuant to 42 U.S.C. §§ 1985(3) and 1986, must also be dismissed. The § 1985(3) claim alleges a conspiracy by defendants to drain and deplete the finances of plaintiff and commissioned drivers who are not part of the bargaining unit.[2]

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[2] Paragraphs 29, 30 and 31 allege the following:

> 29. Since May, 1972, by reason of an unlawful conspiracy plan, plot enterprise and scheme to drain and deplete the finances of plaintiff, defendants have wrongfully taken great sums of plaintiff's money aggregating many thousands of dollars.
>
> 30. Defendants have engaged in an unlawful conspiracy, enterprise and combination to dupe and trick plaintiff into making contributions to the Fund. The said conspiracy, enterprise, and combination was an

(Continued on following page)

In *United Brotherhood of Carpenters and Joiners v. Scott*, 463 U.S. 825 (1983), the Supreme Court construed § 1985(3) not to reach conspiracies motivated by bias towards others on account of their economic views, status or activities. *Id.* at 839.

"Because transgressions of § 1986 by definition depend on a preexisting violation of § 1985, if the claimant does not set forth a cause of action under the latter, its claim under the former necessarily must fail also." *Rogin v. Bensalem Township*, 616 F.2d 680, 696 (3d Cir. 1980), *cert. denied*, 450 U.S. 1029 (1981). Thus, I must dismiss Counts IV and V.[3]

(Continued from previous page)

invidious discrimination against drivers who became "Commission drivers".

31. Defendants each and every one of them, having knowledge of the wrongs being done to plaintiffs, and having the power and authority to prevent or stop the commission of the wrongs, have neglected and wilfully refused to act in preventing, or stopping the wrongs being done.

[3] I note that in an affidavit attached to his answer to the pending motions, William Jones states that he is over forty years of age and that commissioned drivers are predominantly of the black race. The plaintiff argues that these allegations set forth in the affidavit are sufficient to identify classes of individuals protected under section 1985(3). The statements contained in the affidavit are not part of the allegations of the complaint and accordingly the motions to dismiss Counts IV and V, as these counts are presently stated, must be granted. The record does not disclose any basis for amendment of the complaint since it does not appear that any action taken by the

(Continued on following page)

Defendants' move to dismiss the state law causes of action on the ground that the claims are preempted by the provisions of ERISA. In *Pilot Life Insurance Co. v. DeDeaux*, 107 S. Ct. 1549 (1987), the Supreme Court held that ERISA preempts state common law tort and contract actions asserting improper processing of a claim for benefits under an insured employee benefit plan. The detailed provisions of § 502(a) set forth the exclusive comprehensive civil enforcement scheme. Accordingly, I must dismiss the state law claims set out in Counts VI to X of plaintiff's complaint because they relate to the employee pension benefit plan.

The motions to dismiss plaintiff's federal ERISA claims focus upon the procedural history of this case that defendants argue bars the claim. Plaintiff has unsuccessfully presented his claims to the Administrator, the Trustees, and an arbitrator. The complaint sets forth a cause of action under ERISA and is not subject to dismissal on motion of defendants. However, alternatively, defendants move for summary judgment. The summary judgment motion record includes the administrative record developed in plaintiff's attempt to administratively recover pension benefits or a return of his contribution. Defendants' motions are grounded on the contention that plaintiff's ERISA claims are barred by the

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(Continued from previous page)

Fund was directed at Mr. Jones because he was a commissioned driver. The record discloses that he was denied benefits because he was not a member of the bargaining unit described in the collective bargaining agreement.

doctrine of *res judicata*. Clearly, Jones is seeking to relitigate in this action claims decided against him by the arbitrator. Plaintiff was not required to exhaust administrative remedies; however, he voluntarily initiated the administrative proceedings. The Trust Fund Pension Plan and the American Arbitration Association submission expressly provide for the finality of the arbitrator's award. Although plaintiff was not required to pursue arbitration before filing this suit, the ERISA cause of action is barred under the doctrine of *res judicata* by the final arbitration award. *Delaney v. Union Carbide Corp.*, 749 F.2d 17 (8th Cir. 1984); *Wilson v. Fischer & Porter Co. Pension Plan*, 551 F. Supp. 593 (E.D. Pa. 1982).

Also, plaintiff argues that summary judgment should not be entered on the basis of *res judicata* because he is neither a beneficiary nor participant under the Plan. Thus, he contends that he is free to challenge the authority of the arbitration award. As the Third Circuit recently observed, where a party voluntarily submits a dispute to arbitration, he is bound by the award where his statements and conduct manifests a clear intent to arbitrate. *Teamsters Local Union No. 764 v. J.H. Merritt & Co.*, 770 F.2d 40 (3d Cir. 1985). Mr. Jones through counsel initiated the arbitration proceeding and submitted both his claim for benefits or for return of his contribution to the arbitrator; thus, he is bound by the award.

Finally, plaintiff has not made a showing that the Trustees decision to follow a uniform policy of no return of good faith contributions is arbitrary or capricious. The no return policy is based upon a decision of this court, *Crown Cork, supra*, affirmed by the court of appeals. It has been consistently applied by courts and arbitrators in this

district. It is related to a valid plan purpose and is not contrary to the plain language of the plan. As the Court of Appeals recently stated in *Gaines v. Amalgamated Ins. Fund*, 753 F.2d 288, 289 (3d Cir. 1985):

> A plan interpretation should be upheld even if the court disagrees with it, so long as the interpretation is rationally related to a valid plan purpose and not contrary to the plain language of the plan. *See Miles v. New York State Teamsters Conference Pension and Retirement Fund Employee Pension Benefit Plan*, 698 F.2d 593, 601 (2d Cir.), *cert. denied* ___ U.S. ___, 104 S. Ct. 105, 78 L.Ed. 2d 108 (1983).

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JONES, WILLIAM

vs. CIVIL ACTION

SCHAFFER, CHARLES J., JR., et al. NO. 86-3733

ORDER

(Filed Aug 11, 1987)

AND NOW, this 4th day of August, 1987, IT IS ORDERED that the motion of defendants to dismiss the causes of action alleged in Count I and Counts IV to X are GRANTED. IT IS FURTHER ORDERED that defendants'

motions to dismiss Count III are DENIED. IT IS FURTHER ORDERED that defendants' motions for summary judgment as to Count III are GRANTED.

BY THE COURT:

/s/ Clifford Scott Green
CLIFFORD SCOTT GREEN, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JONES, WILLIAM

vs.

SCHAFFER, CHARLES J., JR., et al.

CIVIL ACTION

NO. 86-3733

JUDGMENT

(Filed Aug 11, 1987)

AND NOW, this 4th day of August, 1987, judgment is entered in favor of defendants and against plaintiff.

BY THE COURT:

/s/ Clifford Scott Green
CLIFFORD SCOTT GREEN, J.

Exhibit A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-1533

WILLIAM JONES

Appellant,

vs.

CHARLES J. SCHAFFER, JR., Individually and as Administrator of the Teamsters Pension Trust Fund of Philadelphia and Vicinity and WILLIAM LEMON, VINCENT DAGEN FREDERICK W. FOX, JR., JOSEPH CIMINO, PETER P. COYLE and PAUL CARDULLO, Trustees of the Teamsters Pension Trust Fund of Philadelphia and Vicinity and E. CROSSMAN HALL, Individually and as President of Crossman's Van and Storage Company, Inc. and CROSSMAN'S VAN AND STORAGE COMPANY, INC.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 86-3733)
(Honorable Clifford Scott Green)

Submitted Under Third Circuit Rule 12(6)
February 23, 1988

Before: BECKER, HUTCHINSON and SCIRICA,
Circuit Judges

(Filed Mar 25, 1988)

MEMORANDUM OPINION

SCIRICA, *Circuit Judge.*

In this appeal, the primary issue is whether the district court properly granted summary judgment for defendant-appellees on plaintiff-appellant Jones' claims under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 - 1461 (1982).

The underlying facts are essentially undisputed. For twenty-eight years, Jones was a driver for appellee Crossman's Van and Storage Company (Crossman's), and a member of Teamsters Local Union 513. Between 1955 and 1972, Jones was paid on an hourly basis. Pursuant to a collective bargaining agreement, Crossman's made regular payments to the Teamsters Pension Trust Fund of Philadelphia and Vicinity (Fund) on behalf of Jones. In 1972, Jones became a "commission driver": he no longer received an hourly rate, but was paid a commission on each job performed. As a consequence, Crossman's stopped contributing its own money to the Fund on behalf of Jones. Instead, with Jones' authorization, Crossman's thereafter made contributions to the Fund with Jones' money, withheld from his commissions.

Apparently, the Fund did not learn of this arrangement until eleven years later, when Jones retired and applied for a pension. After investigating Jones' work history, the Fund discovered that Jones was a commission driver from 1972 until retirement in 1983. The Fund administrator, appellee Schaffer, denied Jones' request, because as a commission driver, he was not part of the bargaining unit. Jones appealed to the Trustees of the Fund. The Trustees affirmed Schaffer's denial and

rejected Jones' claim for the money that Crossman's withheld from his commissions and paid to the Fund on his behalf. Their decision was based on the Fund's policy of not returning good-faith contributions paid by mistake.

Jones then submitted his claim to the American Arbitration Association, naming as parties Schaffer, the Trustees, and Crossman's. After an evidentiary hearing where Jones appeared with counsel and participated, the arbitrator found that as a commissioned driver, Jones was not a participant in the pension plan. The arbitrator denied Jones the pension and refused to require the Fund to return contributions made on his behalf while he was a commissioned driver. Jones then filed suit in district court.

The district court granted defendants' motion for summary judgment on Jones' ERISA claims, finding them res judicata because they were litigated at arbitration. The court found the arbitrator's decision was final. The court also determined that the arbitrator's decision denying the return of contributions made to the Fund between 1972 and 1983 was not arbitrary and capricious because the Fund's "no return" policy is based upon the decision in *Crown Cork & Seal Co. v. Teamsters Pension Trust Fund of Philadelphia and Vicinity*, 549 F. Supp. 307 (E.D. Pa. 1982), *aff'd* 720 F.2d 661 (3d Cir. 1983). In addition, the district court dismissed Jones' claims that alleged violations of 42 U.S.C. §§ 1985 and 1986, and pendent state-law claims.

Discussion

The key issue is whether the district court properly granted summary judgment in favor of defendant on

plaintiffs' ERISA claims. Our review is plenary. *Sorba v. Pennsylvania Drilling Co.*, 821 F.2d 200, 203 (3d Cir. 1987), *cert. denied*, 108 S.Ct. 730 (1988).

We conclude that summary judgment was proper. The arbitrator's decision that Jones is entitled neither to a pension nor to return of contributions made to the Fund from 1972 to 1983 cannot be relitigated in the district court. In *Teamsters Local Union v. J.H. Merritt & Co.*, 770 F.2d 40 (3d Cir. 1985), we held that a party who voluntarily participates in arbitration is bound by the arbitrator's decision. Jones, like the employer in *Merritt*, voluntarily submitted to arbitration his claim for a pension, or in the alternative, for return of certain contributions made to the Fund, naming as parties the Trustees of the Fund, Schaffer (the administrator), and Crossman's. *See* Appellant's Br. at 10-11. Jones is bound by the arbitrator's decision.[1] *Accord Delaney v. Union Carbide Corp.*, 749 F.2d 17, 18-19 (8th Cir. 1984). He had a full and fair opportunity to litigate his claims before the arbitrator against all of the parties named in this complaint. The claims raised in this action were identical to those raised in arbitration. Furthermore, Jones was represented by counsel at the evidentiary hearing. *See Montana v. United States*, 440 U.S. 147, 153-54 (1979).

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[1] Although *Merritt* involved enforcement of an arbitration award against an employer by the union, rather than against an individual employee like Jones, it is nonetheless applicable to this case. *See Griesmann v. Chemical Leaman Tank Lines, Inc.*, 776 F.2d 66, 72-73 & n. 11 (3d Cir. 1985) (recognizing that grievance committee decision, review of which is the same as for arbitration proceedings, is binding on *employees* who submitted to that procedure).

Jones contends that some issues were neither submitted to nor considered by the arbitrator – for example, that the Trustees did not perform their duty to periodically inform Jones of his status under the pension plan. Because Jones could have raised those issues at arbitration, he is precluded from raising them in a subsequent action. *Allen v. McCurry*, 449 U.S. 90 (1980) ("[R]es judicata . . . precludes the parties . . . from relitigating issues that were or could have been raised in . . . [a previous] action." *Id.* at 94.). *See also Merritt*, 770 F.2d at 42 (party waives its right to raise on appeal an objection to arbitrator's decision when the party failed to raise the objection before the arbitrator).

Jones also contends that the right to litigate a statutory claim in court, like his ERISA claim, cannot be waived by prior submission to arbitration. We disagree. Arbitration is binding even for statutory claims. In *Shearson/American Express, Inc. v. McMahon*, 107 S.Ct. 2332 (1987), the Court held arbitration agreements non-binding only where Congress, through statutory text or legislative history, prohibits waiver of a judicial forum. *Id.* at 2337. ERISA evidences no such congressional intent. In *Grossmuller v. International Union*, 715 F.2d 853 (3d Cir. 1983), we recognized that the legislative history of ERISA illustrates Congress' intent to encourage internal dispute resolution (including arbitration), with minimal resort to courts. *Id.* at 856-57 & n. 3. Therefore, the existence of an ERISA claim does not obviate the binding nature of the arbitrator's decision. *See Delaney*, 749 F.2d at 18-19.

Finally, we conclude that the arbitrator's decision denying either a pension or return of contributions was not arbitrary and capricious. In *Crown Cork*, the court

refused to require the Fund to return to an employer contributions mistakenly made to the Fund. The court found that to do otherwise would violate the underlying purpose of ERISA, which is to protect the integrity of pension funds for the benefit of employees and their beneficiaries: requiring repayment, even of mistaken contributions, would affect the stability and integrity of pension funds. 549 F. Supp. at 311-12. Although in *Crown Cork* the court denied repayment to an employer rather than to an employee, its rationale also applies here. Repayments to individual employees, as well as to employers, can affect the integrity and stability of pension funds. Therefore, we will affirm the district court's grant of summary judgment for defendants on Jones' ERISA claims.

We have considered the other issues raised on appeal by Jones, *i.e.* that the district court erred by dismissing Jones claims under the Civil Rights Act of 1871 and his state law claims, and conclude that dismissal was proper. Therefore, we will affirm the district court's dismissal of those claims.

TO THE CLERK:

Please file the foregoing opinion.

/s/ A. J. Scirica
Circuit Judge

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ATTORNEY FOR WILLIAM JONES, PETITIONER

William Jones
Petitioner

vs.

Charles Schaffer, et al

U.S. COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-1533

NOTICE OF APPEAL

Notice is hereby given that William Jones, hereby appeals to the United States Supreme Court from the final judgment entered in this action on the 25th day of March 1988.

/s/ Roland J. Atkins
ROLAND J. ATKINS, ESQUIRE
O'BRIEN & O'BRIEN ASSOCIATES
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Attorney for William Jones.

June 17, 1988

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ATTORNEY FOR WILLIAM JONES, PETITIONER

William Jones
Petitioner

vs.

Charles Schaffer, et al

U.S. COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-1533

CERTIFICATE OF SERVICE

I, Roland J. Atkins, Esquire hereby certify that on the 17th day June 1988, I mailed by first class mail postage prepaid copies of the Notice of Appeal to the following:

Frank Sabatino, Esquire
1600 Market Street
Suite 3600
Philadelphia, Pa 19103

H. Kenneth Tull, Esquire
1710 Spruce Street
Philadelphia, Pa 19103

/s/ Roland J. Atkins
ROLAND J. ATKINS, ESQUIRE

42 U.S.C. 1985 Conspiracy to interfere with civil rights.

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

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42 U.S.C. 1986 Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons

guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.